

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 708

Introduced by Senator Speier

February 22, 2005

An act to add Part 5.7 (commencing with Section 17800) to Division 9 of the Welfare and Institutions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Speier. Drug discount program: conditions of participation.

Existing law establishes the federal Medicaid program, administered by each state, California's version of which is the Medi-Cal program. The Medi-Cal program, which is administered by the State Department of Health Services, provides qualified low-income persons with health care services.

Existing federal law requires the United States Secretary of Health and Human Services to enter into an agreement with each manufacturer of covered drugs that are not subject to a rebate under an agreement between the state Medicaid program and the manufacturer under which the amount required to be paid to the manufacturer for covered drugs, with certain exceptions, purchased by a covered entity, as defined, does not exceed an amount equal to the average manufacturer price for the drug under the federal Medicaid program in the preceding calendar quarter, reduced by the rebate received pursuant to the Medicaid agreement.

This bill would require the State Department of Health Services to develop a standard contract for private nonprofit hospitals whereby a hospital that elects to participate in the drug discount program

established under federal law may agree to provide ~~medical~~ *charity* care to indigent patients pursuant to a memorandum of understanding with the department on a continuing basis, and to annually report its cost savings to the department under the federal drug program. The bill would require a hospital entering into such an agreement to increase by an unspecified amount the percentage of its operating expenses that goes to charity care by the end of the 3rd year that the hospital is a party to the ~~memorandum of understanding~~ *contract*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Part 5.7 (commencing with Section 17800) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 5.7. HEALTH CARE FOR LOW-INCOME PERSONS
NOT COVERED BY THE MEDICARE PROGRAM OR THE
MEDI-CAL PROGRAM

17800. ~~Any~~ *A* not-for-profit hospital that elects to participate in the drug discount program established under Section 340B of the Public Health Service Act may enter into an agreement with the State Department of Health Services for that purpose, which shall be subject to this part.

17801. The State Department of Health Services shall develop a standard contract for use in ~~any~~ *an* agreement entered into pursuant to Section 17800, which shall ~~be in the following form:~~ *include, but not be limited to, the following terms:*

(a) *Initially upon contracting with the State Department of Health Services pursuant to Section 17800, the not-for-profit hospital shall agree to continue its historic commitment to the provision of charity care, as reported to the Office of Statewide Health Planning and Development.*

(b) *A not-for-profit hospital that contracts with the State Department of Health Services pursuant to Section 17800 and that enrolls in the drug discount program established under Section 340B of the federal Public Health Service Act (42 U.S.C. Sec. 256b) shall annually report to the department the amount*

1 saved on spending for outpatient prescription medication as
2 compared to average Group Purchasing Organization prices.

3 (c) At the commencement of the fourth year that the hospital is
4 a party to the contract with the State Department of Health
5 Services pursuant to Section 17800, the hospital shall increase
6 the percentage of its operating expenses that goes to charity
7 care, as reported to the Office of Statewide Health Planning and
8 Development, by ____ percent if the department determines that
9 the hospital has realized an average savings of at least 20
10 percent on outpatient prescription drugs as compared to average
11 Group Purchasing Organization prices.

12 (d) The term of the contract shall continue until terminated by
13 either party upon not less than 60 days' prior written notice to
14 the other party.

15 -
16 ~~MEMORANDUM OF UNDERSTANDING~~
17 ~~BETWEEN THE STATE DEPARTMENT~~
18 ~~OF HEALTH SERVICES AND~~
19 ~~_____~~
20 _____

21 ~~THIS MEMORANDUM OF UNDERSTANDING~~ is
22 made this ____ day of ____, ____ by and between the
23 undersigned representatives of the State Department of Health
24 Services (DHS) and _____,
25 a nonprofit corporation organized and existing under the laws of
26 the State of California.

27 —
28 **RECITALS:**
29 —

30 ~~WHEREAS, _____ is a California not-for-profit hospital~~
31 ~~that provides a disproportionate share of health care services~~
32 ~~to the Medicare population in addition to supporting many~~
33 ~~programs that benefit the indigent, uninsured, or~~
34 ~~underinsured population in California;~~

35 ~~WHEREAS, _____ desires to participate in the drug~~
36 ~~discount program established under Section 340B of the~~
37 ~~Public Health Service Act (the 340B Program);~~

38 ~~WHEREAS, In order to participate in the 340B~~
39 ~~Program _____ must enter into an agreement with a unit of the~~
40 ~~state government pursuant to which _____ commits to provide~~

1 health care services to low income individuals who are not
2 entitled to Medicare or Medicaid benefits at no
3 reimbursement or considerably less than full reimbursement
4 from these patients;

5 ~~WHEREAS, _____ desires to make such a formal~~
6 ~~commitment to DHS;~~

7 ~~WHEREAS, DHS agrees to accept such commitments~~
8 ~~on behalf of the citizens of California;~~

9 ~~NOW, THEREFORE, In consideration of the mutual~~
10 ~~agreements and covenants contained therein and for other~~
11 ~~good and valuable consideration, the receipt and sufficiency~~
12 ~~of which hereby are acknowledged, it is mutually agreed and~~
13 ~~covenanted, under seal, by and between the parties to this~~
14 ~~agreement, as follows:~~

15 —

16 ~~**1. Commitment of _____ to Provide**~~
17 ~~**Indigent Care.**~~

18 —

19 During the term of this MOU, _____ agrees to continue
20 its historic commitment to the provision of health care to
21 indigent, uninsured, and underinsured residents of _____.
22 In 2006, this commitment totaled approximately \$ _____
23 in lost charges. Pursuant to this commitment, it is the
24 intention of _____ that indigent care provided during the
25 term of this MOU will range generally between 10
26 percent lower or higher than the above number. In any
27 event, _____ will assume that all patients will receive
28 necessary care, as required by law, regardless of ability
29 to pay.

30 —

31 ~~**2. Acceptance and Acknowledgments of DHS.**~~

32 —

33 ~~(a) DHS accepts the commitment of _____ set forth~~
34 ~~above;~~

35 ~~(b) DHS hereby acknowledges that the health care~~
36 ~~services provided by _____ hereunder are in the public~~
37 ~~interest and are being provided to individuals who are~~
38 ~~not entitled to benefits under Title XVIII, or eligible for~~
39 ~~assistance under any state plan pursuant to Title XIX, of~~
40 ~~the Social Security Act; and~~

1 —(c) DHS acknowledges that _____ is providing these
2 services at no reimbursement or considerably less than
3 full reimbursement from the patients.

4 — **3. Representations of _____.**

5 _____ represents that as of the date
6 hereof:

7 —(a) _____ constitutes a corporation duly organized and
8 validly existing in good standing under the laws of the
9 State of _____ with the corporate power and authority to
10 enter into and perform its obligations under this MOU;
11 and

12 —(b) _____ is a tax-exempt corporation under Section
13 501(c)(3) of the Internal Revenue Code of the United
14 States, as amended and under applicable laws of the
15 State of _____.

16 — **4. Terms and Termination.** The term of this MOU
17 shall commence on the date first above written and shall
18 continue until terminated by either party upon not less than
19 60 days' prior written notice to the other.

20 — **5. Notice.** All notices required or permitted to be given
21 under this MOU shall be deemed given when delivered by
22 hand or sent by registered or certified mail, return receipt
23 requested, addressed as follows:

24 —
25 _____
26 —
27 — Sent to: (Hospital Representative) _____
28 — Attention: _____
29 _____
30 _____

31 — **6. Governing Law.** This MOU shall be governed by
32 and construed in accordance with the laws of the State of
33 California.

34 —
35 — IN WITNESS WHEREOF, _____ and
36 the DHS have executed this agreement as of the day and year
37 first written above by their duly authorized representatives.

38 —
39 —
40 _____ WITNESS:

1 _____

2 _____

3 _____ DHS _____

4 -

5 _____ Name: _____

6 _____ Title: _____

7 -

8 ~~17802. A hospital may terminate any contract entered into~~

9 ~~between that hospital and the State Department of Health~~

10 ~~Services pursuant to Section 17800 within one year after the date~~

11 ~~the contract was made.~~

12 ~~17803. A hospital that has entered into a contract pursuant to~~

13 ~~Section 17800 shall, as a condition of continuing participation in~~

14 ~~the program provided under this part, increase the percentage of~~

15 ~~its operating expenses that goes to charity care, as reported to the~~

16 ~~Office of Statewide Health Planning and Development, by _____~~

17 ~~percent by the end of the third year that the hospital is a party to~~

18 ~~the contract.~~

O